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22 UNITED STATES DISTRICT COURT

23 NORTHERN DISTRICT OF CALIFORNIA - OAKLAND DIVISION

24 VERICOOL WORLD LLC,

25 Case No. 4:22-cv-2440

26 Plaintiff

27 **COMPLAINT FOR FALSE  
ADVERTISING (15 U.S.C. §1125) AND  
UNFAIR COMPETITION (CAL. BUS. &  
PROF. CODE § 17200)**

28 v.  
IGLOO PRODUCTS CORPORATION,

Defendant.

DEMAND FOR JURY TRIAL

This is an action for false advertising under the Lanham Act, 15 U.S.C. § 1125 and unfair competition under California's Unfair Competition Law, Bus. & Prof. Code § 17200. Plaintiff Vericool World LLC ("Vericool"), by and through its attorneys, brings this action to address the false statements made by Defendant Igloo Products Corporation ("Igloo") in connection with the sale of Igloo's "Recool" cooler. Vericool respectfully alleges as follows:

## NATURE OF ACTION

1. This is a case of false advertising and unfair competition by Igloo. Igloo, the world's largest cooler manufacturer, launched a massive campaign to confuse consumers into believing that Igloo—rather than Vericool—was the first to manufacture a biodegradable cooler.

2. Vericool is a small, Black-owned business founded by Darrell Jobe, an ex-felon turned environmentally and socially conscious entrepreneur. Using Jobe's design, in 2017, Vericool successfully manufactured a fully functional, 100% recyclable and biodegradable cooler. Vericool's product, named "Vericooler III," was groundbreaking in that it provided a much-needed eco-friendly and cost-effective alternative to harmful packaging materials made from plastic that have plagued our planet for decades.



3. In 2018, Vericool revealed its “Ohana Cooler,” a second biodegradable cooler made from pulp-based fiber marketed for individual use, at a major industry trade show, the Packaging Expo, which took place October 14–17, 2018, in Chicago, Illinois (the “2018 PackExpo”).



4. Vericool's booth at the 2018 trade show was highly sought-after and caught the attention of Igloo, among many others. A representative from Igloo approached Vericool,

1 acknowledged its innovations as a shock to the industry, and expressed interest in a licensing  
 2 relationship. This led to discussions between Jobe and Igloo's CEO and Vice President of Financing.  
 3 Vericool promptly provided information concerning its Ohana Cooler, including the number to one  
 4 of its patents for thermally insulating packaging.

5. Unbeknownst to Vericool, about **13 days** after closely observing the Ohana Cooler,  
 6 Igloo filed a patent application for its own biodegradable cooler. Igloo then launched a competing  
 7 cooler also constructed from pulp-based fiber named "Recool." Igloo falsely advertised Recool as  
 8 the world's "first" biodegradable cooler knowing full well that Vericool had already produced two  
 9 biodegradable coolers.

10. With knowledge that Vericool was preparing to distribute its *second* biodegradable  
 11 product in the mass market soon, Igloo used its considerable resources to promote its biodegradable  
 12 cooler as the first of its kind. Igloo's false and misleading statements duped consumers and retailers  
 13 into believing that Recool was in fact the first biodegradable cooler manufactured, stealing from  
 14 Vericool the cachet that comes from producing a pioneering product. On information and belief,  
 15 consumers and members of the industry have construed Igloo's claims that Recool is the "first"  
 16 biodegradable cooler to mean that Vericool's claims of being the first mover in this industry were  
 17 false. Vericool has tried to set the record straight. But Igloo's pervasive advertising and continued  
 18 diminishment of Jobe's innovation have materially harmed Vericool. Although Vericool produced  
 19 the first biodegradable cooler, of which Jobe is the inventor, and was the first to file a patent  
 20 application for its invention, potential distributors now question Vericool's claims, compounding  
 21 the challenges that Vericool already faces as a small company founded by a young Black man.

22. Black Americans such as Jobe represent less than 1% of executives and business  
 23 owners in the packaging industry, and it is even rarer that Jobe became a major innovator in the  
 24 industry without a formal education. Jobe and his employees, many of whom are formally  
 25 incarcerated people of color, are familiar with being overlooked and having to work much harder to  
 26 get opportunities that would come more easily to one with a more fortunate background. Even with  
 27 the early success of the Vericooler III cooler and the excitement they garnered for the Ohana Cooler  
 28 at the 2018 PackExpo, their efforts to get the Ohana Cooler into stores proved to be no different.

8. Already facing prejudices as a Black man driving environmental innovations, Igloo's misleading statements reinforced skepticism that Jobe has faced throughout his career. The Ohana Cooler was perceived as an alternative in the market, rather than credited as the pioneering product that it is. Igloo's false claims also depressed the public and press response connected with the retail launch of the Ohana Cooler. On information and belief, this was a direct and proximate result of Igloo's misleading portrayal of Recool as the first biodegradable cooler to be produced.

9. Igloo engaged in conduct that is all too familiar in American history. While America has come a long way since the earliest Black inventors were denied patents, there have been far too many examples of Black innovators being pushed into the shadows, such that individuals responsible for important innovations such as Elijah McCoy, who invented a lubricating device that facilitated train travel, and Garrett Morgan, who invented the three-light traffic light (among other devices), are relatively unknown today. The effective erasure of the contributions of Black innovators and small businesses by large corporations remains a concern of minority-owned businesses today.

10. Vericool wants consumers to have many eco-friendly options. But it cannot stand silent while Igloo profits from false and misleading claims undercutting Vericool's business. As detailed below, Igloo's false advertising and acts of unfair competition have confused consumers and have harmed, and will continue to harm, Vericool and Vericool's commercial reputation as a pioneer in eco-friendly packaging.

## PARTIES

11. Plaintiff Vericool World LLC (formerly Vericool, Inc.) is a Delaware corporation having its principal place of business at 7066 Las Positas Road, Livermore, California 94551.

12. On information and belief, Defendant Igloo Products Corporation is a Delaware corporation having its principal place of business at 777 Igloo Road, Katy, Texas 77494-2972.

## **JURISDICTION AND VENUE**

13. This action arises under the Lanham Act, 15 U.S.C. §1125, and California's Unfair Competition Law, CA BPC § 17200. The Court has subject matter jurisdiction over this action, pursuant to Section 39(a) of the Lanham Act, 15 U.S.C. § 1121(a), and Sections 1131 (federal

1 question jurisdiction), 1338(b) (unfair competition), and 1367(a) (supplemental jurisdiction over  
2 state law claims) of the Judicial Code, 28 U.S.C. §§ 1331, 1338(b), and 1367(a). Subject matter  
3 jurisdiction over this action also exists pursuant to 28 U.S.C. § 1332 because the named parties are  
4 of completely diverse citizenship and the amount in controversy exceeds \$75,000 exclusive of  
5 interest and costs.

6 14. The Court has personal jurisdiction over Igloo because it advertises and sells its  
7 products to consumers in California, regularly does business in the state, purposefully directs its  
8 business activities towards California residents, and, on information and belief, derives substantial  
9 revenue from sales of Recool products in California. Igloo's false advertisements are also available  
10 to California residents. As more fully alleged below, Igloo's conduct was aimed at a citizen of  
11 California, Vericool, with knowledge that injury to Vericool would occur in California.

12        15.     Venue is proper in this District under 28 U.S.C. § 1331, because Igloo is subject to  
13 personal jurisdiction in this District and a substantial part of the events giving rise to the claims,  
14 including the advertisement of Igloo's coolers as the "first" biodegradable coolers and resulting  
15 sales of Recool coolers, occurred in this District.

## **DIVISIONAL ASSIGNMENT**

16. This matter should be assigned to the Oakland Division pursuant to Civil Local Rule  
3-2(c) because a substantial part of the events or omissions giving rise to the claims occurred in  
Alameda County within the Oakland District.

## FACTS

## Vericool's Environmentally and Socially Driven Mission

22        17. Vericool is the brainchild of Darrell Jobe, an environmentally conscious entrepreneur  
23 who overcame his circumstances as a former gang member and felon to develop ground-breaking  
24 technology to revolutionize the temperature controlled packing industry. At thirteen, Jobe was  
25 homeless, had permanently dropped out of school, and joined a gang. He spent the next decade in  
26 and out of juvenile and adult correctional facilities—a story known all too well by parolees and ex-  
27 felons who are left ill-equipped to find a job after serving time and fall into recidivism. Determined  
28 to turn his life around in his early 20s, and with little formal education beyond childhood, Jobe was

1 given a second chance. Jobe spent six months convincing a friend's father to give him an interview  
 2 and ultimately landed a sales position in the packaging industry. Jobe learned of the devastating  
 3 effects of traditional plastic packaging on the planet and dedicated himself to developing more  
 4 environmentally-friendly and cost-effective alternatives with the goal of ending the use of expanded  
 5 polystyrene (EPS) in shipping materials. As a result of his own persistence, Jobe taught himself the  
 6 fundamentals of packaging, materials, and engineering.

7       18.     In 2015, Jobe founded Vericool, Inc. (Vericool's predecessor), an environmentally-  
 8 friendly packaging solutions company.

9       19.     Vericool disrupted the packaging industry with its development of renewable raw  
 10 and post-consumer thermal packaging material, offering a cost-effective and efficient substitute for  
 11 EPS and Styrofoam insulation.

12       20.     Historically, most thermally stable and commercially available packaging material  
 13 has been made with EPS due to its low cost, durability, and effectiveness at retaining temperature.  
 14 EPS is both difficult and expensive to recycle, leading to manufacturers and consumers disposing  
 15 of EPS-based containers after a single use.

16       21.     EPS is not decomposable or compostable. Instead, it "photodegrades," or breaks  
 17 down into smaller and smaller pieces that accumulate in our environment. That accumulation is  
 18 harmful to the planet: pieces of EPS are accidentally consumed by animals mistaking it for food,  
 19 release carcinogenic styrene into its surroundings, and when exposed to sunlight, create air  
 20 pollutants which contaminate landfills and deplete the ozone layer. The compounds used in  
 21 manufacturing EPS include benzene and styrene, both of which have been identified as harmful to  
 22 human health with neurological effects and increased risks of cancer from prolonged exposure.

23       22.     Lawmakers across the country have pushed to reduce or ban the usage of single-use  
 24 EPS products. Consumers have also pushed for eco-friendly alternatives to EPS that are both  
 25 effective and low-cost.

26       23.     Vericool's products meet this need for eco-friendly, cost-effective alternatives.  
 27 Vericool's products are made of non-toxic, starch-based, and water soluble and biodegradable  
 28 materials that match or outperform EPS, meet compostable and/or curbside recyclability standards,

1 and meet US ASTM D6400 and European specification EN 13431, which require non-harmful  
 2 degradation in 180 days or less. Vericool's products are also affordable. A 12-inch square cube of  
 3 Vericool's packaging material costs less than \$5, which is roughly comparable to the cost of an EPS  
 4 version of the same size.

5 24. As a testament to their contributions to the packaging space, Vericool and its founder  
 6 have won multiple awards, including the Small Business of the Year award from California state  
 7 senator Steve Glazer in 2019, recognition as a 2019 "Agent of Change" by Diablo Magazine, the  
 8 #Gamechangers Award from Innovation Tri-Valley, StopWaste's Business Efficiency Award,  
 9 recognition as a "Community Hero" in 2019 by Insperity, the 2019 Tri-Valley Heroes Innovation  
 10 Award, and Outdoor Retailer's 2019 Inspiration Award for Manufacturers. Vericool's contributions  
 11 and unique business model have also been profiled in the media. In March 2019, Forbes.com  
 12 published an article covering Vericool's groundbreaking biodegradable coolers and its "Second  
 13 Chance" program to help combat recidivism. *See Exhibit 2 (a compilation of true and correct copies*  
 14 *of online publications concerning Vericool) at 8–11.*

15 25. Vericool owns roughly two dozen U.S. and international patents and allowed  
 16 applications for its technology, with many more patent applications pending. With these inventions,  
 17 Vericool offers several different kinds of products, including envelopes, boxes, and coolers.

18 26. Vericool's commitment to the environment is part of the company's deep-rooted  
 19 mission and commitment to second chances. In addition to fighting for a second chance for our  
 20 planet, Vericool is committed to giving people a second chance. Vericool combats recidivism by  
 21 giving formerly incarcerated men, women, and youth a second chance to live productive lives by  
 22 providing them with supportive and reliable employment opportunities. Jobe's commitment to  
 23 second chances is a reflection of his own experience being the beneficiary of a second chance.

24 27. While many employers hesitate to hire ex-felons, over a quarter of Vericool's factory  
 25 employees have been in jail or prison. In addition to employment, Vericool provides employees  
 26 with a stock-option plan, allowing them to claim ownership in the company.

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 28

## **The Vericooler III and the Ohana Coolers**

28. In late 2016, Jobe began focusing his efforts on developing biodegradable ice chests or coolers that can be used with moisture.

29. In December 2016, Jobe conceived of a design to manufacture a molded fiber paper cooler with organic wax that is biodegradable and recyclable.

6       30.    Jobe discovered that a tongue-and-groove design on a molded container and lid  
7   reduced thermal loss at the edges of the container by 80%, meaning less coolant would be required.  
8   In addition to the physical design of the cooler, Jobe was determined to develop the material for an  
9   EPS-free solution to insulation. After experimenting with a variety of materials—everything from  
10   starch and coconut husks to bamboo and hay—Jobe identified a post-consumer plant fiber that was  
11   both recyclable and biodegradable, and as effective as EPS at insulation. This material became the  
12   basis for Vericool’s eco-friendly cooler. The newly designed cooler would offer breakthrough  
13   technology: a lightweight, insulating thermal kit that could safely transport food, pharmaceuticals,  
14   and other temperature sensitive products for a prolonged period.

15        31. After developing several prototypes, in February 2017, Vericool filed its first patent  
16 application naming Jobe as the sole inventor, Application No. 15/478,087, for thermally insulating  
17 packaging that includes a solid compostable or recyclable shell formed primarily of a plant fiber.  
18 Vericool was awarded Patent No. 10,046,901 (“the ’901 Patent”) for thermally insulating packaging  
19 that was derived from this innovation on August 14, 2018, and it continues to expand its intellectual  
20 property portfolio.

21       32. The first of Vericool's biodegradable containers debuted in 2017. After creating the  
22 first VERICOOLER® product, a compostable shipping box, Jobe invented a biodegradable cooler,  
23 named "Vericooler III." The cooler is manufactured via a proprietary process that uses 100% old  
24 corrugate containers embedded with a moisture barrier with starch-based insulation that meets US  
25 ASTM D6400 and home compost standards. The cooler is recyclable and the starch insulation can  
26 be dissolved in water. Not only was the thermally insulating packaging made from biodegradable  
27 and recyclable molded fiber paper, it was effective at keeping its contents cool and inexpensive—a  
28 major innovation in the packaging industry. While the Vericooler III product was primarily sold for

1 use in thermally stable transportation of food and pharmaceuticals, it was also seen as product for  
 2 ordinary consumer use.

3       33.     In May 2017, Vericool created a YouTube account and posted its first video featuring  
 4 Jobe and other Vericool employees explaining how the 100% recyclable Vericool product, which  
 5 contains 100% compostable insulation, fills the need for alternatives to Styrofoam containers and  
 6 can be created in any size.

7       34.     Vericool debuted the Vericooler III cooler in September 2017, at the Las Vegas  
 8 Packaging Expo (the “2017 PackExpo”), garnering buzz among the industry and investors.

9       35.     In advance of the 2017 PackExpo, Vericool created and posted a new YouTube video  
 10 showing the Vericooler III product in action. The promotional video highlighted that Vericooler III  
 11 is the “1st insulated packaging that is 100% recyclable and compostable,” where the cooler itself is  
 12 completely recyclable, and the insulation inside can be composted. Vericool also promoted its new  
 13 product on its website at [vericoolpackaging.com](http://vericoolpackaging.com), on its social media accounts, and in press releases  
 14 concerning the debut of the Vericooler III and highlighting that the cooler can be curbside recycled  
 15 and will biodegrade in months. *See Exhibit 1*, which is a collection of true and correct screenshots  
 16 of examples of Vericool’s press releases and social media posts from 2017 to mid-2018. Vericool’s  
 17 press releases were later picked up by other news outlets.

18       36.     Jobe personally promoted the Vericooler III cooler and Vericool’s other eco-friendly  
 19 solutions at the 2017 Expo:



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 27       37.     Being the first of its kind, Vericool’s cooler design piqued the interest of companies  
 28 across a broad range of industries, from pharmaceutical companies to food distributors, including

1 the Molson Coors Brewing Company (“Molson Coors”).

2 38. Industry publications took notice and reported on Vericool’s early successes. For  
 3 example, Packaging World reported that Raised Real, a subscription based delivery service for flash-  
 4 frozen, organic plant-based baby meals, signed a multi-year, multimillion dollar contract with  
 5 Vericool and launched its first meal kit in the Vericooler III coolers in January 2018.

6 39. In the summer of 2017, Jobe visited the island of Maui on a family vacation in  
 7 Hawaii, where he learned of the local push to completely ban the use of EPS. Preparing for a day  
 8 out with his family, Jobe went to the store to purchase food and an ice chest. Jobe asked the store  
 9 clerk if they sold environmentally friendly ice chests and was directed to an aisle full of Styrofoam  
 10 coolers. Although the Maui City Council had just passed a bill banning polystyrene foam  
 11 (Styrofoam) food containers and ice chests/coolers were excluded from the ban. Jobe was not  
 12 surprised to learn this because he could not find a single alternative to Styrofoam coolers available  
 13 anywhere. Although his family had been waiting for him to start their day, Jobe was immediately  
 14 inspired to create a solution. Using the description set forth in its February 2017 patent application  
 15 describing a thermally insulated, biodegradable “shell,” Jobe fine-tuned this design and finalized a  
 16 sketch for a biodegradable cooler specifically for personal use.

17 40. On September 22, 2017, Jobe sketched the first prototype of the personal use  
 18 biodegradable cooler, which would be made with the same materials as the Vericooler III product.  
 19 The sketch modified the design set forth in the ’901 Patent, capturing a slightly different design for  
 20 the bottom portion, with a smaller recessed inside.

21 41. The development of the personal use cooler ran in tandem to Vericool’s debut of the  
 22 Vericooler III cooler. On September 19, 2017, a representative from Molson Coors contacted  
 23 Vericool interested in the Vericooler III coolers specifically for its ice chest function. In her email,  
 24 she wrote: “I am contacting you as I am interested in exploring the possibility to use your vericool  
 25 as a ‘cool box’ for beer. Something similar to what other brands have used in the past: you buy some  
 26 ice, you drop the beer cans/bottles along the ice inside of your box, and the drinks stay cold for the  
 27 next 8-12 hours.” As the process to develop this kind of cooler from eco-friendly materials was well  
 28 underway, on September 29, 2017, Vericool responded that it had “an ice chest coming to market

1 soon that I think you would be interested in.”

2 42. On September 28, 2017, engineers at Vericool created a rendering utilizing multiple  
 3 designs of a family-sized biodegradable ice chest cooler, with either a solid fiber wall, a starch base  
 4 compostable biodegradable interior wall, or an air wall. Vericool named it the “Ohana Cooler” in  
 5 an homage to the state that inspired its creation.

6 43. The Ohana (now simply “Vericooler”) Cooler was designed as a multi-use, reusable  
 7 cooler that can hold water for up to 30+ days, the largest of which can hold up to 100 lbs. In October  
 8 2017, using custom built machines, Vericool began producing prototypes of the Ohana Cooler.

9 44. In June 2018, the tooling design was complete. And by September 2018, Vericool  
 10 successfully manufactured samples of the Ohana Cooler in preparation for the product’s wider  
 11 public debut at the 2018 PackExpo.

12 45. Leading up to the 2018 PackExpo, multiple news organizations published articles  
 13 previewing the Ohana Cooler’s upcoming release. On October 12, 2018, Businesswire.com  
 14 published a press release entitled *Vericool Inc to Unveil Revolutionary Reusable Sustainable*  
 15 *Consumer Cooler at 2018 Pack Expo in Chicago*, where the Ohana Cooler is described as a  
 16 “breakthrough” in consumer coolers. *See* Exh. 2 at 1–2.

17 46. In mid-October 2018, Vericool showcased the Ohana Cooler at the 2018 PackExpo,  
 18 the largest packaging show in the world. The Ohana Cooler, shown below, drew the attention of  
 19 industry heavyweights and the press.



1       47. Over 260 participants stopped by Vericool's booth.



9       48. Numerous companies, such as Staples, Georgia Pacific, and Walmart, expressed an  
 10 interest in partnering with Vericool. On October 15, 2018, NSPackaging.com published an article  
 11 entitled *Vericool unveils sustainable product lines*, previewing Vericool's upcoming release of the  
 12 Ohana Cooler. The article described the Ohana Cooler as a "reusable and recyclable cooler for  
 13 consumers," which "can be easily placed in curbside recycling" and can be used in "outings, boating,  
 14 camping, and sporting events." *See Exhibit 2 at 3.* By November 2018, the first bulk order of the  
 15 Ohana Cooler was manufactured and ready for sale.

16       **Igloo's False Advertising Following the 2018 PackExpo**

17       49. Among the many who expressed interest in Vericool's coolers at the 2018 PackExpo  
 18 was Igloo.

19       50. On information belief, Igloo was established in 1947 and is the largest cooler  
 20 manufacturer in the world with 1,500 employees and over 500 products sold at thousands of retailers  
 21 across the country.

22       51. Igloo representatives attended the 2018 PackExpo. An Igloo packaging engineer, Ji  
 23 Lee, approached Vericool's booth and upon seeing the Ohana Cooler, expressed an interest in a  
 24 possible licensing deal. According to Vericool's booth representative, Ms. Lee was "intrigued,  
 25 surprised [and] shocked" with the Ohana Cooler.

26       52. On October 19, 2018, a few days after the 2018 PackExpo, Jobe received a  
 27 notification on LinkedIn that Igloo's Vice President of Financing, Manfredo Thibau, had viewed his  
 28 LinkedIn profile. Jobe messaged Thibau on LinkedIn, letting him know that Igloo's staff visited

1 Vericool's booth at PackExpo, that "they were impressed with [Vericool's] soon launch of the  
 2 Ohana Cooler which is 100% recyclable and holds water and ice indefinitely," and offering that the  
 3 "two companies can work on a joint partnership." *See Exhibit 3*, which is a true and correct  
 4 screenshot of LinkedIn messages.

5 53. Within ten minutes after Jobe sent his message, Thibau sent the below message in  
 6 response, and also let Jobe know that he had given Dave Allen, Igloo's CEO, a "heads up" that Jobe  
 7 would call him.

8  **Manfredo Thibau** • 1:05 pm  
 9 Darrell,  
 10 Thanks for your note. I would suggest  
 11 you reaching out to our CEO, Dave Allen,  
 12 his cell phone is [REDACTED]  
 Kind regards,  
 Manfredo

13 Exhibit 3 at 2.

14 54. On October 22, 2018, Jobe called Allen and provided him with background on  
 15 Vericool and the history of its coolers. Jobe informed Allen that Vericool had developed Vericooler  
 16 III nearly two years prior, owned the '901 Patent, and developed the Ohana Cooler in 2017. Jobe  
 17 also relayed that after the quick development of the Ohana Cooler, Vericool was planning to take  
 18 the Ohana Cooler to market within the next few months. Jobe explained the success of the Vericooler  
 19 III product and industry excitement surrounding its early 2018 release, and communicated that he  
 20 would send Igloo more information on the Ohana Cooler if Igloo was interested in exploring a  
 21 partnership. Allen indicated that he was interested in a partnership and that Igloo was considering  
 22 developing a product similar to Jobe's. Jobe also told Allen that if he looked up the '901 Patent, he  
 23 would see that Vericool's innovation for coolers was included in the patent description. Following  
 24 the call, emailed Allen with an informational pamphlet about the Ohana Cooler that included the  
 25 '901 Patent number, as well as a mutual non-disclosure agreement. *See Exhibit 4*, which is a true  
 26 and correct copy of the October 22, 2018 email from Jobe to Allen including the attached pamphlet.

27 55. By November 5, 2018, Jobe had not received a response from Allen. Given the  
 28 continued industry interest in the Ohana and Vericooler III coolers and a pending launch on

1 Amazon.com, Jobe followed up on his email to Allen to inquire about Igloo's status. Jobe sent Allen  
 2 a text message explaining Vericool's plans and asking: "Curious to know your thoughts on licensing  
 3 and does it make sense for Vericool to proceed with our plan of action or hold off until you and I  
 4 discuss?" Allen responded acknowledging Vericool's upcoming retail launch and stated that he  
 5 "spoke with the team and we're [not going] to proceed with licensing at this time." *See Exhibit 5*,  
 6 which is a true and correct copy of screenshots of text messages exchanged between Jobe and Allen  
 7 in and around October through November 2018.

8 56. Instead, Vericool came to learn that Igloo was working on its own biodegradable  
 9 cooler that shared material aspects of Vericool's products. In fact, Igloo filed a provisional patent  
 10 application entitled "Single-Walled Disposable Cooler Made Of Pulp-Based Material"  
 11 (No. 62/754,829) on November 2, 2018—about **13 days** after the 2018 PackExpo.

12 57. On or around April 20, 2019, six months after the 2018 PackExpo, Igloo began  
 13 widely marketing its impending release of a biodegradable cooler named "Recool." The Recool  
 14 cooler is a family-sized molded cooler designed for individual use and made from pulp-based  
 15 fiber—exactly like Vericool's Ohana Cooler:



24 58. According to Brian Garofalow, vice president of marketing at Igloo who was  
 25 interviewed for a Forbes.com article, the concept for the cooler was "conceived in 2018," and  
 26 developed for a mere six months before its April 2019 launch. Similar to the Ohana Cooler, the  
 27 Recool cooler is described as "large enough to fit food, drinks and ice for a day out for four people,"  
 28 and capable of retaining ice "for up to 12 hours" and "hold[ing] water without leaking for up to 5

1 days.” Also like the Ohana and Vericooler III coolers, Igloo’s Recool is made from molded pulp or  
 2 recycled paper. *See Exhibit 8* (a compilation of true and correct copies of online articles concerning  
 3 Recool coolers) at 13–20.

4 59. On information and belief, Igloo had not developed its Recool cooler when it viewed  
 5 Vericool’s Ohana Cooler at the 2018 PackExpo.

6 60. To Jobe’s surprise, despite the fact that Igloo knew that Vericool had already  
 7 produced the Ohana Cooler in 2018 and, on information belief, that Igloo knew that the Vericooler  
 8 III cooler was manufactured and had been sold years earlier, Igloo advertised Recool as “the world’s  
 9 first eco-friendly cooler” and the “first cooler made from 100% biodegradable materials” on its  
 10 website, at [igloocoolers.com](http://igloocoolers.com), and its Instagram and Facebook accounts:





See Exhibit 6, which is a compilation of true and correct screenshots of Igloo's online marketing material and press release.

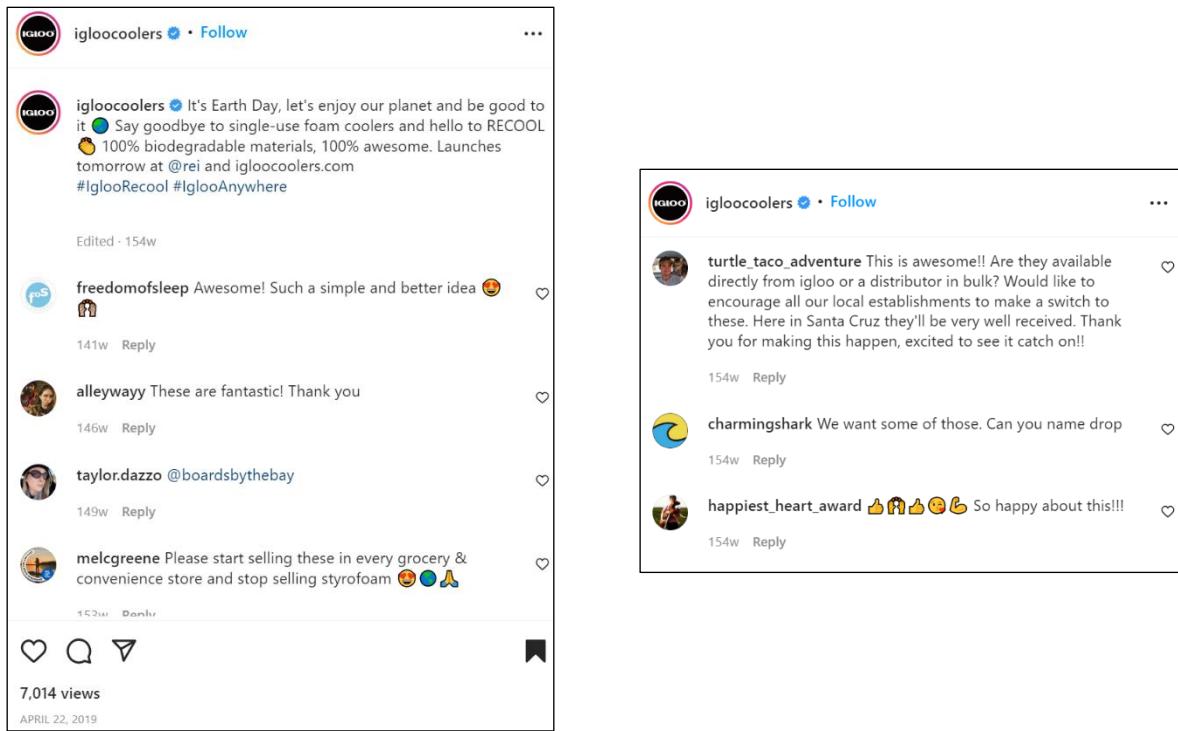
61. Advertising partners and consumers alike echoed Igloo's false description on Instagram, describing Recool as the "first" biodegradable cooler:



See Exhibit 7, which is a compilation of true and correct screenshots of third-party posts on Instagram.

1       62. Igloo's announcement of its launch of the Recool cooler was covered by the media,  
 2 which echoed Igloo's false description of it as the "first" biodegradable cooler and incorrectly  
 3 credited Igloo as the pioneer of the biodegradable cooler. For example, BusinessWire published a  
 4 press release from Igloo entitled "*Igloo Invents and Unveils RECOOL*" describing Recool as "[t]he  
 5 World's First Eco-Sensitive Cooler, Made From 100% Biodegradable Materials." *See* Exh. 6 at 3–  
 6. GearJunkie.com published an article several days later entitled "*Hate Styrofoam Coolers? Igloo*  
 7 *Launches First Biodegradable Alternative.*" *See* Exh. 8 at 1–6. In May 2019, CNET.com published  
 8 a review of the Recool cooler, and quoted Igloo, calling Recool "the world's first eco-sensitive  
 9 cooler made from 100% biodegradable materials" (the "CNET Recool Review"). *See id.* at 7–9.

10      63. Igloo succeeded in getting consumers to believe that Recool was in fact the first  
 11 biodegradable cooler. Consumers on social media credited Igloo with having developed a "great  
 12 idea" and expressed an immediate interest in trying the new product.



25      Exh. 6 at 7–8 (third-party comments to Igloo's social media marketing material).

26      64. Vericool also launched its mass market retail campaign for the Ohana Cooler in 2019.  
 27 Igloo's and Vericool's biodegradable coolers are among very few eco-friendly cooler options in the  
 28 market today.

1       65. In contrast to Igloo's Recool launch, coverage of the Ohana Cooler's retail launch in  
 2 2019 was limited. Many articles portrayed the Ohana Cooler as secondary to Igloo's biodegradable  
 3 cooler. In a GearJunkie.com article, the Ohana Cooler was described as "**another** alternative to  
 4 Styrofoam coolers," and compared to Igloo's RECOOL: "[t]he newest entry in the small-but-  
 5 growing biodegradable cooler market is the Ohana Cooler from Vericool. **Much like the Igloo**  
 6 **RECOOL biodegradable cooler** . . . its makers intend the Ohana Cooler to be used a few times."  
 7 See Exhibit 9 (collection of true and correct copies of online articles concerning the Ohana Cooler)  
 8 at 8–9 (emphasis added). Werd.com described the Ohana Cooler as "**not the first of its species.**"  
 9 *Id.* at 5 (emphasis added). Bioplastics News published an article entitled: *Let's End Styrofoam:*  
 10 *Ohana Cooler Enters Biodegradable Cooler Market*, where it describes Vericool as "join[ing] the  
 11 ranks of biodegradable, post-consumer-recycled, disposable coolers" and the Ohana Cooler as  
 12 "**much like the Igloo RECOOL biodegradable cooler.**" *Id.* at 6 (emphasis added). On information  
 13 and belief, the misconception that Vericool's products were secondary to Igloo's Recool cooler was  
 14 caused by Igloo's advertisement of Recool as the "first" biodegradable cooler.

15       66. Due to this confusion, Vericool undertook efforts to set the record straight. For  
 16 example, following the publication of the CNET Recool Review, Vericool informed CNET.com  
 17 that Vericool had already developed a biodegradable cooler for years, and urged CNET to review  
 18 the Ohana Cooler. Although CNET then published an article entitled *Igloo who? The Vericool*  
 19 *Ohana is an eco-friendly cooler you can recycle*, which lauded the Ohana Cooler for its efficacy  
 20 and price, it still referred to the Ohana Cooler as only "**another** eco-friendly disposable cooler on  
 21 the market." See Exh. 9 at 1 (emphasis added).

22       67. But Vericool could not make up for the momentum it lost as a result of the deception  
 23 from Igloo's advertising campaign. The perception of Vericool as a second mover and the  
 24 implication that Jobe is a "con" for promoting his own innovation, played into prejudices that Jobe  
 25 had to overcome his entire life. As a black man and former felon, Jobe has had to overcome  
 26 skepticism, doubt, and racism throughout his life. He has had to confront overt racism in the  
 27 boardroom and implied bias on the convention floor. Igloo's false claims, unfortunately, gave  
 28

support to existing prejudices that encumbered Vericool's growth. Vericool did not have the resources needed to combat widespread advertising efforts of an industry giant like Igloo.

68. Upon information and belief, Igloo falsely claimed that the Recool cooler was the world's "first" biodegradable cooler with an intent to deceive and induce customers who value eco-friendly and innovative products to purchase Igloo's cooler under the mistaken impression that it was in fact the first biodegradable cooler to be produced or manufactured when it was not. Upon information and belief, Igloo's advertising campaign was a success and it profited from consumers and distributors who chose the Recool cooler instead of Vericool's competing products.

69. As a result of Igloo's conduct, Vericool had to incur the cost of corrective advertising, suffered injury to its reputation as an innovator and lost the visibility and cachet associated with being the first to produce a biodegradable cooler. On information and belief, as a result of Igloo's conduct, Vericool has lost sales of its coolers to Igloo's Recool cooler.

## **CLAIMS FOR RELIEF**

## **FIRST CLAIM FOR RELIEF**

**FALSE ADVERTISING UNDER THE LANHAM ACT (15 U.S.C. §1125(A)(1)(B))**

70. Vericool incorporates the allegations set forth in the preceding paragraphs as though fully set forth herein.

71. Igloo's marketing and advertising of the Recool cooler on its website constitutes false advertising of the nature of Igloo's cooler and unfair competition under the Lanham Act.

72. As detailed above, Igloo has made, and continues to make, false and misleading statements in advertising materials that its Recool cooler is the “world’s first eco-friendly cooler,” “the world’s first cooler made from biodegradable materials,” the “world’s first cooler made from 100% biodegradable materials,” and other substantially similar statements.

73. At all times when Igloo made these false and misleading statements in mid-April 2019 to the present, Igloo knew that they were untrue. Vericool was first to manufacture a biodegradable cooler and Igloo had already viewed Vericool's biodegradable Vericooler III and Ohana Coolers when Igloo started marketing its Recool cooler as the "first" biodegradable cooler.

74. Igloo's false and misleading statements are made on its website where customers can directly purchase Recool coolers for shipment nationwide and on Igloo's promotional social media accounts. Igloo's false and misleading statements constitute commercial advertising or promotion in interstate commerce within the meaning of the Lanham Act.

75. Igloo's false and misleading advertising statements and claims are material in that they are likely to influence consumer purchasing decisions. On information and belief, Igloo focused its advertising campaign around the Recool being the "first" biodegradable cooler because it understood that consumers value innovative products and are more likely to purchase a product that is the "first" of its kind rather than a secondary alternative.

76. Igloo's false and misleading advertising statements have a tendency to deceive a substantial segment of its audience and, on information and belief, did in fact confuse consumers of eco-friendly coolers and the media into believing that Igloo was the first to produce a biodegradable cooler and that all other biodegradable coolers in the market, such as Vericool's coolers, were secondary.

77. On information and belief, Igloo has realized unjust profits, gains, and advantages from its unlawful actions and has caused Vericool monetary damage in an amount presently unknown and to be determined at trial, but believed by Vericool to be in the millions of dollars.

78. Igloo's actions have also caused irreparable injury to Vericool and its reputation and Igloo's actions will continue to cause irreparable injury necessitating a permanent injunction.

79. On information and belief, Igloo has engaged in this activity knowingly, willfully, and in bad faith. Prior to claiming that Igloo's Recool was the "first" biodegradable cooler, Igloo knew that Vericool had already produced two fully biodegradable coolers and had seen them in person at the 2018 PackExpo. Igloo's actions make this an exceptional case under 15 U.S.C. § 1117(a). Vericool is thus entitled to an award of attorneys' fees and costs.

## **SECOND CLAIM FOR RELIEF**

**UNFAIR COMPETITION UNDER CAL. BUS. & PROF. CODE § 17200 ET. SEQ.**

80. Vericool incorporates by reference the contents of the preceding paragraphs above as though fully set forth herein.

81. The above-described conduct by Igloo is likely to mislead or deceive the public concerning the nature of Igloo's Recool cooler and therefore constitute unfair business practices in violation of California Business & Professions Code § 17200, *et. seq.*

82. Igloo's campaign advertising that the Recool cooler is the "first" biodegradable cooler further constitutes business acts that violate Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) and are therefore unlawful.

83. The unfair and unlawful business practices of Igloo described above present a continuing threat is are meant to deceive members of the public into believing that Recool is the “first” biodegradable cooler, when it is not.

84. As a direct and proximate result of Igloo's wrongful conduct, Vericool has been injured in fact and has lost visibility and sales.

85. On information and belief, Igloo has realized unjust profits, gains, and advantages from its unlawful actions and has caused Vericool monetary damage in an amount presently unknown but to be determined at trial.

86. Igloo's unfair and unlawful business practices have also caused irreparable injury to Vericool and its reputation and Igloo's actions will continue to cause irreparable injury necessitating a permanent injunction.

## **DEMAND FOR JURY TRIAL**

Pursuant to Federal Rule of Civil Procedure 38(b), Vericool hereby demands a trial by jury on all issues triable to a jury.

## PRAYER FOR RELIEF

**WHEREFORE**, Vericool respectfully requests the Court to enter judgment in its favor and against Igloo as follows:

A. That the Court enter judgment in favor of Vericool, including injunctive relief, and against Igloo on all claims for relief asserted in this Complaint;

B. That the Court enter judgment determining that Igloo has engaged in false/misleading advertising in violation of 15 U.S.C. § 1125(a);

1                   C. That the Court enter judgment determining that Igloo engaged in unfair competition  
2 and acts of unfair and deceptive business practices in violation of California Business &  
3 Professions Code § 17200 *et seq.*;

4                   D. That the Court grant an injunction permanently enjoining and restraining Igloo, its  
5 officers, agents, servants, employees, attorneys, and all persons acting for, by, through, or under  
6 them, or in concert with them from claiming that Igloo's Recool cooler is the "first"  
7 biodegradable or eco-friendly cooler, the "world's first cooler made from biodegradable  
8 materials," the "world's first cooler made from 100% biodegradable materials" or substantially  
9 similar claims;

10                  E. That the Court issue an order directing Igloo to file with the Court and serve on  
11 Vericool within thirty (30) days after service on them of an injunction, or such extended period  
12 as the Court may direct, a report in writing under oath setting forth in detail the manner and form  
13 in which Igloo has complied with the injunction;

14                  F. That the Court award to Vericool monetary relief in an amount to be fixed by the  
15 Court in its discretion as just, including:

- 16                   1. All unjust profits received by Igloo from sales of the Recool cooler made as a  
17 result of its false/misleading advertising and unfair competition;
- 18                   2. All damages sustained by Vericool as a result of Igloo's false/misleading  
19 advertising and unfair competition, including ascertainable actual damages and  
20 the costs incurred by Vericool for corrective advertising.

21                  G. That the Court find this case to be exceptional under the Lanham Act in light of  
22 Igloo's knowing and willful false/misleading advertising and that Vericool be awarded its costs  
23 for this action and Vericool's reasonable attorneys' fees incurred;

24                  H. That Vericool's damages be trebled;

25                  I. That the Court award to Vericool pre-judgment and post-judgment interest on all  
26 damages awarded, as permitted by law; and

27                  J. That the Court award to Vericool all other relief as this Court deems just and proper.

1 Dated: April 20, 2022

Respectfully submitted,

2 By: /s/ Leeron G. Kalay  
3 Leeron G. Kalay

4 Attorneys for Plaintiff  
5 VERICOOL WORLD LLC

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